

APPEAL # : 22-1625
TAX TYPE: PROPERTY TAX / LOCALLY ASSESSED
TAX YEAR: 2022
DATE SIGNED: 4/4/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND R.ROCKWELL
EXCUSED/RECUSED: J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>PROPERTY OWNER, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, Respondent.</p>	<p>ORDER ON PETITIONER'S REQUEST TO RECONVENE BOARD OF EQUALIZATION</p> <p>Appeal No. 22-1625</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2022</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PROPERTY OWNER

For Respondent: RESPONDENT'S REP-1, COUNTY-1 Assessor

STATEMENT OF THE CASE

On October 13, 2022, Respondent ("County") forwarded to the Tax Commission the Request to Reconvene the Board of Equalization form submitted by Petitioner ("Property Owner"). The Property Owner filed the form asking the Utah State Tax Commission to order the Respondent ("County") to reconvene in order to hear an appeal regarding parcel no. ##### for the 2022 tax year. The Property Owner had not filed a property tax appeal for tax year 2022 to the County Board of Equalization by September 15, 2022, which was generally the deadline to file a valuation or equalization appeal for tax year 2022 pursuant to Utah Code Sec. 59-2-1004. The Property Owner now asks the Tax Commission to order the County Board of Equalization to reconvene to hear the Property Owner's late filed appeal. The County did not submit a response to the Property Owner's request. A Hearing on Request to Reconvene was held on DATE.

APPLICABLE LAW

Utah Code Ann. §59-2-1004(3) provides that the time to file an appeal to the county board of equalization is generally September 15th of the year at issue, as set forth below in pertinent part:

...

(a) Except as provided in Subsection (3)(b) and for purposes of Subsection (2), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:

(i) September 15 of the current calendar year; or

(ii) the last day of a 45-day period beginning on the day on which the county auditor provides the notice under Section 59-2-919.1.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (3)(a).

All tangible taxable property is assessed on the basis of its fair market value, unless otherwise provided by law. There is an exemption for primary residential property at Utah Code Ann. §59-2-103 as follows:

(2) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(3) Subject to Subsections (4) through (7) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

(4) Part-year residential property located within the state is allowed the residential exemption described in Subsection (3) if the part-year residential property is used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption.

Utah Code Sec. 59-2-103.5 addresses applications for a primary residential exemption as follows:

(1) Subject to Subsection (8), for residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:

(a) the residential property was ineligible for the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to have the residential exemption applied to the value of the residential property;

(b) an ownership interest in the residential property changes; or

(c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.

(2) (a) The application described in Subsection (1):

(i) shall be on a form the commission prescribes by rule and makes available to the counties;

(ii) shall be signed by the owner of the residential property; and

(iii) may not request the sales price of the residential property.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the contents of the form described in

Subsection (2)(a).

(c) For purposes of the application described in Subsection (1), a county may not request information from an owner of a residential property beyond the information provided in the form prescribed by the commission under this Subsection (2).

(3) (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:

(i) file the application described in Subsection (2)(a) with the county board of equalization; and

(ii) include as part of the application described in Subsection (2)(a) a statement that certifies:

(A) the date the part-year residential property became residential property;

(B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and

(C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture, and equipment of the owner's tenant.

(b) If an owner files an application under this Subsection (3) on or after May 1 of the calendar year for which the owner seeks to obtain the residential exemption, the county board of equalization may require the owner to pay an application fee not to exceed \$50.

...

The Commission has promulgated Administrative Rule R884-24P-66 to establish the circumstances under which a county board of equalization may accept a Section 59-2-1004 appeal that has been filed after the statutory deadline, as follows in relevant part:

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Subsection 59-2-1004(3)(a) if any of the following conditions apply:

(a) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(a), and no co-owner of the property was capable of filing an appeal.

- (13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.
- (14) Subsection (12) applies only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.
- (15) This rule applies only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Sections 59-2-1006 and R861-1A-9.

Counties are required to mail a valuation notice to property owners no later than July 22 for each tax year at Utah Code Sec. 59-2-919.1 as follows:

- (1) In addition to the notice requirements of Section 59-2-919, the county auditor, on or before July 22 of each year, shall notify each owner of real estate who is listed on the assessment roll.

...

DISCUSSION

Pursuant to Utah Code Section 59-2-103.5, COUNTY-1 has adopted an ordinance requiring property owners to file an application for primary residential exemption in order to obtain the exemption and it is the responsibility of a property owner to comply with these application requirements. A property owner's failure to file the application by the deadline will result in the exemption not being applied for the tax year at issue. There is a general appeal available to property owners to contest the assessed value of property based on either fair market value or equalization each year by the statutory deadline for that year and that deadline is generally September 15. *See* Utah Code Subsection 59-2-1004(3). In this matter, the Property Owner had failed to file the application for the primary residential exemption by the County's May 1 deadline and then failed to file a Utah Code Sec. 59-2-1004 appeal to the County Board of Equalization by the September 15 deadline. As established by administrative rule, a late application to file a valuation or equalization appeal may be allowed under limited circumstances if certain requirements have been met. Utah Admin. Rule R884-24P-66 was adopted to provide the circumstances under which a late filed Sec. 59-2-1004 appeal may be allowed.

On the Request to Reconvene the Board of Equalization, Form TC-194A, each of the circumstances set out in Rule 66 are listed with a check box for property owners to indicate which of the circumstances apply. On the Form TC-194A submitted by the Property Owner, he originally did not check any of the boxes and wrote in the space provided only the following statement, "I have been battling cancer since 12/13/2021." As no other information was submitted on the form or with the form and there was no response from the County, the matter was scheduled for a hearing, which was held on DATE.

From the information presented at the hearing and additional documents the Property Owner submitted for the hearing, more of the relevant facts were presented. The Property Owner had moved into

the property in December 2021 and had not filed an application for primary residential exemption. He stated he did not realize the property was not receiving the exemption. He stated that he had been diagnosed with cancer in DATE and had chemotherapy treatments and radiation, which he had completed in DATE. Although he had finished the treatments, he stated that he was still not feeling well, had lingering memory and other issues and was still battling the effects of the treatment. The County's representative stated that the County records indicate that the Property Owner had filed the application on DATE and that it was approved for tax year 2023 on DATE. The Property Owner also explained that it was employees at the County that told him to file the Request to Reconvene to request that the Tax Commission order the County Board of Equalization to reconvene to hear his late filed Utah Section 59-2-1004 appeal.

At the hearing, it was also established that there was a co-owner of the property. The Property Owner explained that the co-owner was his ex-wife. He stated the reason she had not filed an appeal by the September 15 deadline was "I don't believe she ever saw [the notice]."

As established by administrative rule, a late application to appeal to the County Board of Equalization under Subsection 59-2-1004(3) may be allowed under limited circumstances and Utah Admin. Rule R884-24P-66 was adopted to provide those circumstances. Utah Admin. Rule R884-24P-66(12)(a) provides that a late appeal may be allowed if "[d]uring the period prescribed by Subsection 59-2-1004(3)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal." The period "prescribed by Subsection 59-2-1004(3)(a)" began when the Valuation Notice was mailed no later than July 22, 2022, and ended on September 15, 2022. The Property Owner's medical emergency occurred prior to this time period. He had been treated for cancer with chemotherapy and radiation, but the treatments had been completed in DATE. He did state he was still recovering and undoubtedly he was dealing with side effects after the treatment. However, the period of the medical emergency was prior to the "period prescribed by Subsection 59-2-1004(3)(a)." Additionally, there was a co-owner who could have filed the appeal. The facts in this appeal regarding the co-owner are similar to those in *Order on Petitioner's Request to Reconvene Board of Equalization, Appeal No. 22-1975* (DATE).¹ In *Appeal No. 22-1975* the property owner had a medical emergency during the time period to file an appeal, but the co-owner, who no longer lived at the property and was in the process of divorcing the property owner, could have filed the appeal. In *Appeal No. 22-1975*, pg. 4, the Commission stated:

[T]here was a co-owner for this property who could have filed a timely appeal. As noted above, although Utah Admin. Rule R884-24P-66(12)(a) provides an exception where

¹ This and other Tax Commission decisions are available for review in a redacted format at <https://tax.utah.gov/commission-office>.

“the property owner was incapable of filing an appeal as a result of a medical emergency,” there is the additional requirement that “no co-owner of the property was capable of filing an appeal.” There was no information to indicate that the co-owner was incapable of filing due to the Property Owner’s medical emergency, such as no assertion that she was unable to file an appeal because she was providing care for PROPERTY OWNER. There was no reason offered that the co-owner could not have filed the appeal, had she taken steps to find out about the assessment and decided it was a concern. The notice was mailed to the address of record for the property. The co-owner was no longer living at that address, but property owners are responsible for providing a correct mailing address to the County for tax mailings. The co-owner could have reached out to the County for a copy of the valuation notice and filed the appeal herself.

As in *Appeal No. 22-1975*, the co-owner in the subject appeal may not have been aware of the assessment because the notice was mailed to the Property Owner, but there was no indication that she was not capable of filing an appeal.

DECISION AND ORDER

After reviewing the information presented in this matter, the Property Owner has not established that he met the criteria for a late filed appeal pursuant to Subsection 59-2-1004(3) and Utah Admin. Rule R884-24P-66(12). The Property Owner’s request is denied. It is so ordered.

DATED this _____ day of _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.